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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,872

07/10/2003

Rickey J. Thomas

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1565

27572 7590 03/07/2007  
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EXAMINER

BLAKE, CAROLYN T

ART UNIT

PAPER NUMBER

3724

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/616,872

Applicant(s)

THOMAS ET AL.

Examiner

Carolyn T. Blake

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,4,6 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,6 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 24, 2007 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 24, the limitation requiring "said blade is secured relative to said handle in each of a lengthwise direction of said blade, a widthwise direction of said blade, and a depth wise direction of said blade by a positive engagement of said blade with one of more of said handle and said blade mounting screw" constitutes new matter because it was not sufficiently described in the original specification.

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4. Claims 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 24, it is not understood what is meant by the limitation "said blade is secured relative to said handle in each of a lengthwise direction of said blade, a widthwise direction of said blade, and a depth wise direction of said blade by a positive engagement of said blade with one of more of said handle and said blade mounting screw." It seems as though three positions are being claimed, although only two are disclosed. Clarification is required.

***Claim Rejections - 35 USC § 102***

5. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Davey (2,017,895).

Davey discloses a hand saw (10) as claimed, comprising: a handle (12) including a hand grip portion (20) and first and second blade mounting portions, said hand grip portion defining an inner surface, said first blade mounting portion (including 24 and 27 at A) being disposed on a side surface of said handle and said second blade mounting portion (including 24 and 27 at C) being disposed on a bottom surface of said handle; and a blade (11) removably mounted to either of said first and second blade mounting portions and extending in a first direction (see *Figures* section at the end of this Office action) away from said handle, wherein said inner surface of said hand grip portion is sloped toward said blade so as to be oriented at an acute angle ( $\theta$ , see *Figures*) relative

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to said first direction, and wherein said first and second blade mounting portions each include a key (27) adapted to be received in an end slot (15) in said blade.

The inner surface of the hand grip portion can be considered "sloped toward said blade" because the grip is angled from the outer end until it meets the blade mounting portion. Like Applicant's device, a user's hand will be angled downward and toward the blade when holding the grip.

***Claim Rejections - 35 USC § 103***

6. Claims 3, 4, 6, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davey (2,017,895) in view of Applicant's Admitted Prior Art (hereinafter, AAPA).

Davey discloses a hand saw (10) substantially as claimed, comprising: a handle (12) including a hand grip portion (20) and first and second blade mounting portions, said first blade mounting portion (including 24 and 27 at A) being disposed on a side surface of said handle and said second blade mounting portion (including 24 and 27 at C) being disposed on a bottom surface of said handle; and a blade (11) adapted to be removably mounted to either of said first and second blade mounting portions, wherein said handle (12) is a single, integrally formed member, and wherein said first and second blade mounting portions each include a key (27) adapted to be received in an end slot (15) in said blade.

Davey fails to disclose the blade mounting portions each include a screw boss or a screw. However, in the last Office action, Official notice was taken it is old and well known in the art to use a boss while attaching two parts in order to guide a fastener.

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Applicant failed to traverse the merits of this assertion, so the common knowledge is taken to be admitted prior art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a boss with the Davey device for the purpose of guiding the fastener. In addition, it would have been obvious to one of ordinary skill in the art to use an alternative fastener, such as a screw, with the Davey device since such fasteners are known equivalents.

Claims 24 and 25 are rejected as best understood.

***Response to Arguments***

7. Applicant's arguments filed January 9, 2007 have been fully considered but they are not persuasive.

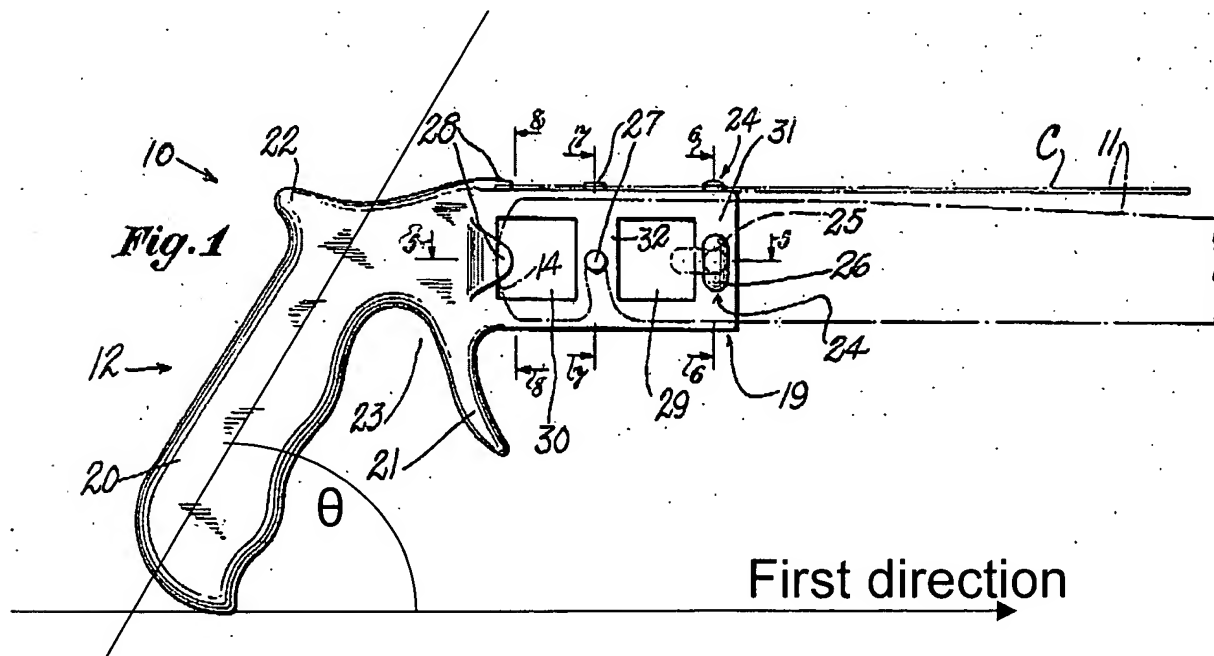
Regarding the rejections under 35 USC 112 of claims 24 and 25, Applicant's arguments are insufficient. From Applicant's arguments, it appears Applicant is attempting to claim the flanges surrounding the blade. However, this is not apparent from the claim language, and the claim should be carefully rewritten in order to be clearly understood.

In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

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1971). While Davey may state an advantage of his device is the lack of moving parts, this does not mean the combination suggested by the examiner teaches away from the reference. Fastening devices such as screws, nails, pins, bolts, and the like are recognized equivalents in the art since they all perform the same function of securing components to one another. While the fastener disclosed by Davey may be superior, this does not mean another fastener would be nonobvious. "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

## Figures



**Conclusion**


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Thursday, 7:00 AM to 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CB  
March 1, 2007

  
BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER